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November 2, 2009

225960

BY HAND-DELIVERY

The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Finance Docket No. 35311, *Amendment to Trackage
Rights Agreement between BNSF Railway Company and
Union Pacific Railroad Company*

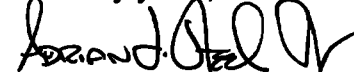
Dear Ms. Quinlan:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of a Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7). Also enclosed is a disk with the text of the pleading in Word format. A check in the amount of \$1,200.00, representing the appropriate filing fee for this transaction, is enclosed.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files.

Please contact me if you have any questions. Thank you.

Sincerely yours,



Adrian L. Steel, Jr.

FEE RECEIVED

NOV 02 2009

**SURFACE
TRANSPORTATION BOARD**

Enclosures

cc: William G. Barr, Esq.
Gabriel S. Meyer, Esq.
Kristy D. Clark, Esq.

FILED

NOV 2 2009

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

NOV 02 2008

**Part of
Public Record**



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35311

BNSF RAILWAY COMPANY
-- AMENDMENT TO TRACKAGE RIGHTS AGREEMENT --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

Kristy D. Clark
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 78131

Adrian L. Steel, Jr.
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006-1101
(202) 263-3237

Attorneys for:
BNSF Railway Company

Dated: November 2, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35311

BNSF RAILWAY COMPANY
-- AMENDMENT TO TRACKAGE RIGHTS AGREEMENT --
UNION PACIFIC RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)



BNSF Railway Company ("BNSF") submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) for the amendment of existing trackage rights granted by BNSF to Union Pacific Railroad Company ("UP") at Keddie, California. The original trackage rights, reflected in an agreement dated as of June 1, 1996, were granted in connection with UP's acquisition of control of Southern Pacific Transportation Company ("SP") in Finance Docket No. 32760 and were exempted by the Board in that proceeding. *See Union Pacific Railroad Company, et al. – Trackage Rights Exemption – Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company*, F.D. No. 32760 (Sub-No. 1), Decision No. 44 (served August 12, 1996) at 231.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal or modification of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in a rail consolidation proceeding. The amendment of trackage rights covered by this notice is based on a written agreement between BNSF and UP, attached as Exhibit B, and is not

being sought in a responsive application in a rail consolidation proceeding. Under these circumstances, the Section 1180.2(d)(7) class exemption is applicable.

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), BNSF submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

The purpose of the amendment to the 1996 trackage rights agreement is to accurately reflect the trackage rights received by UP under that agreement. Specifically, the amendment deletes in its entirety the Exhibit "A" dated June 1, 1996, and replaces it with the Exhibit "A" dated July 24, 2008. The amendment further provides that UP will perform signal maintenance on all signal facilities between BNSF's Bieber Line MP 202.72 and wye connections with UP's Canyon Subdivision.

Name and address of landlord railroad:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131-2828

Name and address of tenant railroad:

Union Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Questions regarding this transaction are to be addressed to BNSF's counsel:

Adrian L. Steel, Jr.
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006-1101
(202) 263-3237

(a)(1)(ii) Consummation Date

The amendment to the trackage rights will be consummated on the effective date of this Notice of Exemption.

(a)(1)(iii) Purpose Sought to be Accomplished

The purpose of the amendment to the 1996 trackage rights agreement is to accurately reflect the trackage rights received by UP under that agreement. Specifically, the amendment deletes in its entirety the Exhibit "A" dated June 1, 1996, and replaces it with the Exhibit "A" dated July 24, 2008. The amendment further provides that UP will perform signal maintenance on all signal facilities between BNSF's Bieber Line MP 202.72 and wye connections with UP's Canyon Subdivision.

(a)(5) List of States in which the Party's Property is Situated

The involved trackage rights are located in the State of California.

(a)(6) Map

A map illustrating the trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A copy of the First Supplement to the Trackage Rights Agreement is attached as Exhibit B.

Labor Protection

BNSF is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980).

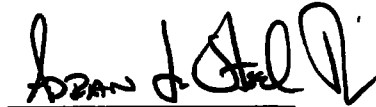
Captioned Summary (Exhibit C)

BNSF submits a captioned summary describing the transaction as Exhibit C.

Environmental and Historic Matters

Any environmental and historical impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental and historical report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R §§ 1105.6(c)(4) and 1105.8(b)(3).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adrian L. Steel, Jr.", written over a horizontal line.

Kristy D. Clark
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 78131

Adrian L. Steel, Jr.
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006-1101
(202) 263-3237

Attorneys for:
BNSF Railway Company

Dated: November 2, 2009

EXHIBIT "A"

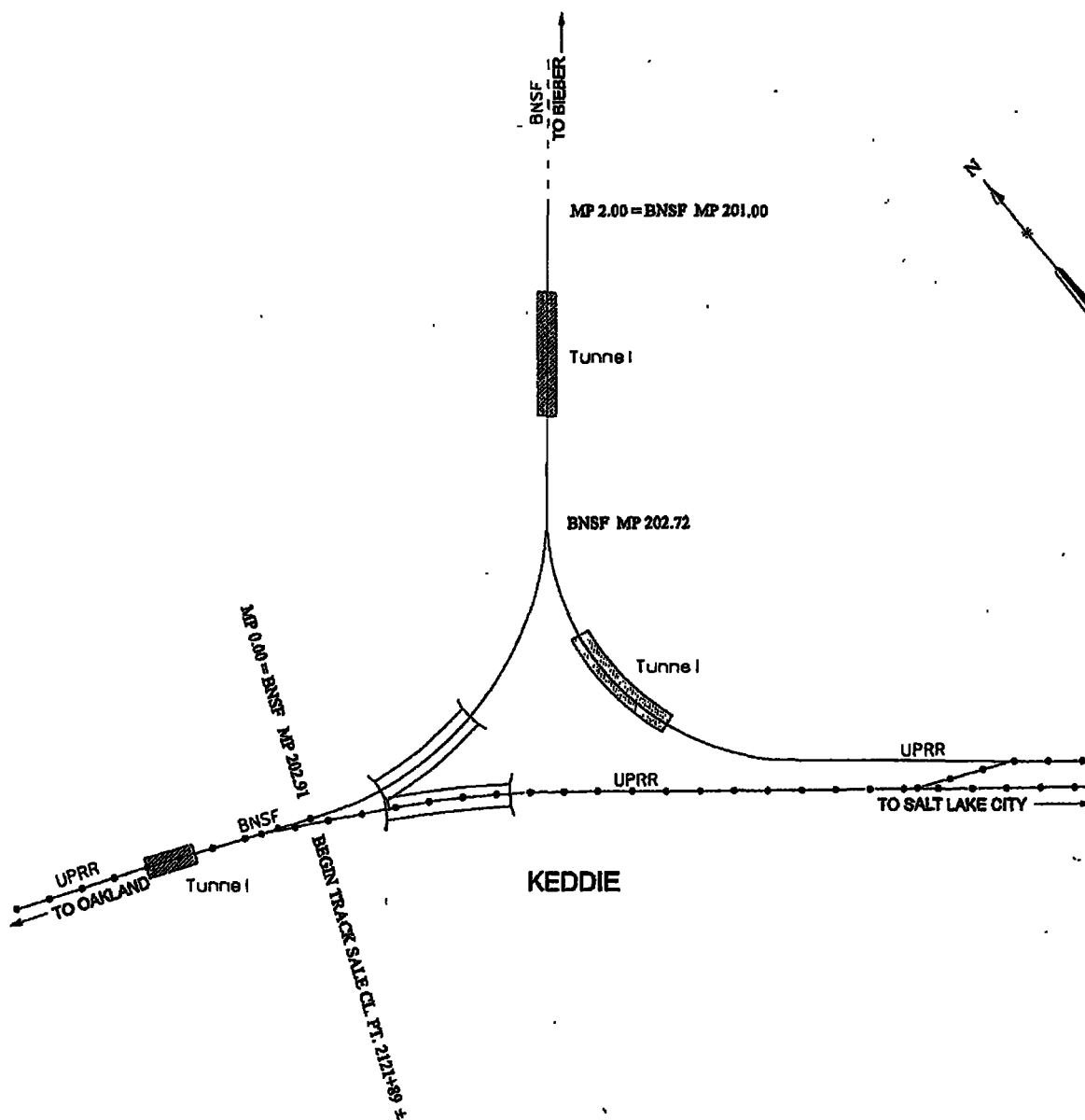
TRACKAGE RIGHTS AGREEMENT

Bleber, Ca to Keddie, Ca

between

BNSF Railway (BNSF) and

Union Pacific Railroad Co. (UPRR)



LEGEND

- BNSF TRACKAGE TO BE USED BY UPRR
- UPRR TRACKAGE

SCALE : NONE

DATE : JULY 24, 2008

MODEL: hardage border

DATE: 24-Jul-08 11:23

FILE: Q:\Exhibit_A\Keddie_v8.dgn

**FIRST SUPPLEMENT TO
KEDDIE CALIFORNIA
TRACKAGE RIGHTS AGREEMENT**

This SUPPLEMENTAL AGREEMENT made and entered into this 1st day of January 2009 by and between BNSF Railway Company, formerly The Burlington Northern and Santa Fe Railway Company ("BNSF" or "Owner"), and Union Pacific Railroad Company ("UP" or "User").

WITNESSTH:

WHEREAS, BNSF and UP are parties to an overhead trackage rights agreement dated June 1, 1996, ("Original Agreement") with the trackage covered thereunder referred to as "Joint Trackage"; and

WHEREAS, the print referred to as Exhibit "A" of the Original Agreement does not accurately reflect the trackage rights UP received under the Original Agreement; and

WHEREAS, BNSF and UP now wish to supplement the Original Agreement by making the appropriate correction to Exhibit "A".

NOW THEREFORE, the parties hereto agree as follows:

- 1) The Exhibit "A" dated June 1, 1996 is hereby deleted in its entirety and replaced by the Exhibit "A" dated July 24, 2008, attached hereto and by this reference made a part hereof.
- 2) UP will perform signal maintenance on all signal facilities between BNSF's Bieber Line MP 202.72 and wye connections with UP's Canyon Subdivision .
- 3) Except as herein provided, all other terms of the Original Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed as of the date written hereinabove.

BNSF RAILWAY COMPANY

By: 

Printed: Sanford Sexhaus

Title: Region VP North Region

Date: 6/1/09

UNION PACIFIC RAILROAD COMPANY

By: 

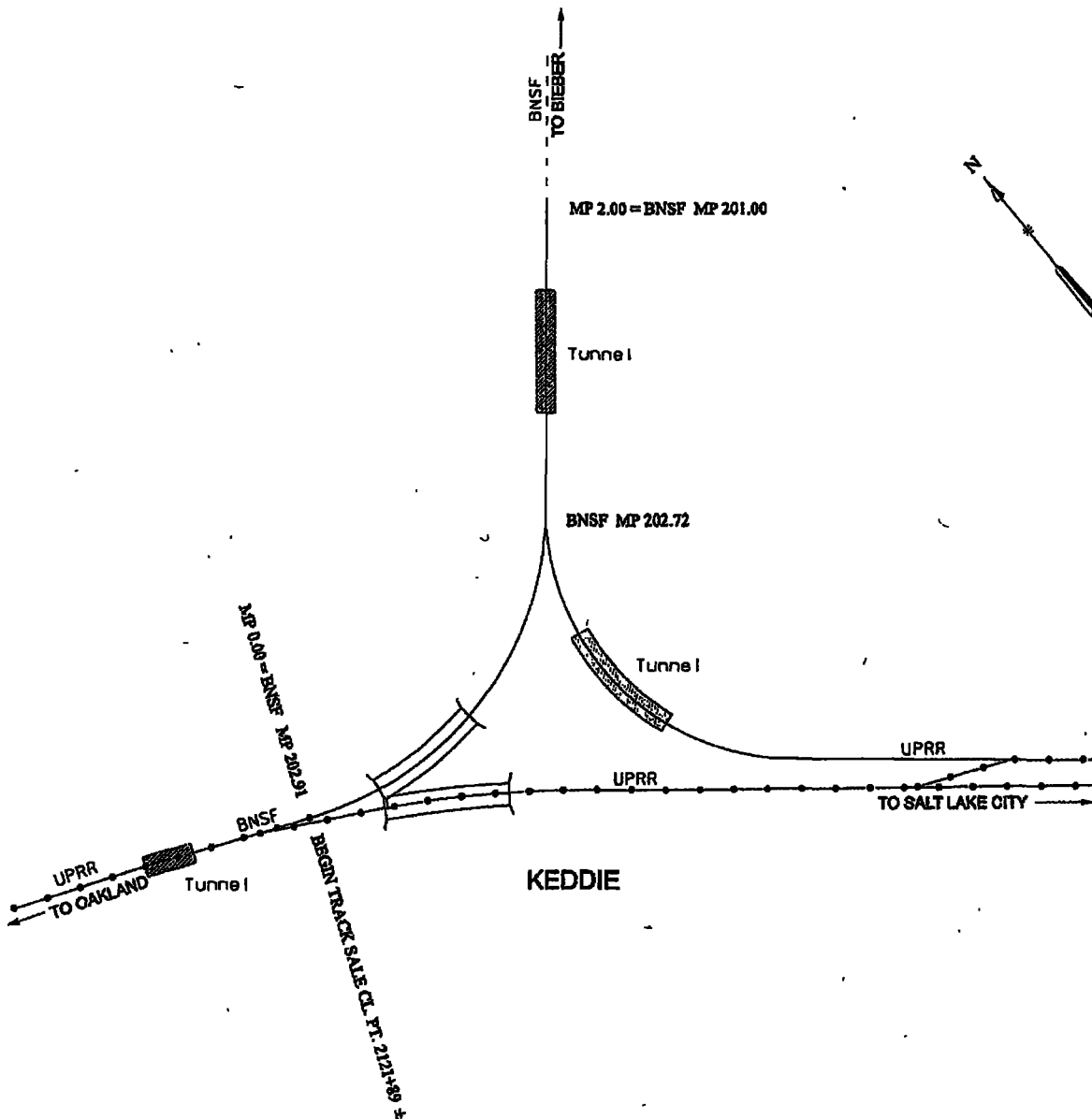
Printed: M. C. Giersch

Title: Director Joint Facilities

Date: April 07, 2009

EXHIBIT "A"

TRACKAGE RIGHTS AGREEMENT Bieber, Ca to Keddie, Ca between BNSF Railway (BNSF) and Union Pacific Railroad Co. (UPRR)



LEGEND

- BNSF TRACKAGE TO BE USED BY UPRR
- UPRR TRACKAGE

SCALE : NONE

DATE: JULY 24, 2008

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB FINANCE DOCKET NO. 35311

BNSF RAILWAY COMPANY
-- AMENDMENT TO TRACKAGE RIGHTS AGREEMENT --
UNION PACIFIC RAILROAD COMPANY

BNSF Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") have agreed to amend certain existing trackage rights granted by BNSF to UP. The original trackage rights, reflected in an agreement dated as of June 1, 1996, were granted in connection with UP's acquisition of control of Southern Pacific Transportation Company ("SP") in Finance Docket No. 32760 and were exempted by the Board in that proceeding. *See Union Pacific Railroad Company, et al. – Trackage Rights Exemption – Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company*, F.D. No. 32760 (Sub-No. 1), Decision No. 44 (served August 12, 1996) at 231.

The trackage rights will be consummated on or after December 2, 2009.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

Anne K. Quinlan
Acting Secretary

VERIFICATION

STATE OF TEXAS

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)

ss.

COUNTY OF TARRANT

)

I, Bruce D. Buehler being duly sworn depose and state that I am MANAGER OF CONTRACTS AND JOINT FACILITIES of BNSF Railway Company, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Bruce D. Buehler

SUBSCRIBED AND SWORN TO before me this 28th day of October, 2009, in the County of Tarrant, State of Texas.

